

Wage and Hour Division, Labor

§ 780.518

§ 780.514 “Growing” and “harvesting.”

The general meaning of “growing” and “harvesting” of agricultural commodities is explained in §§ 780.117 and 780.118 of subpart B of this part 780, where the meaning of these terms as used in the Act’s definition of agriculture is fully discussed. As there indicated, these terms include the actual raising of the crop and the operations customarily performed in connection with the removal of the crops by the farmer from their growing position, but do not extend to operations subsequent to and unconnected with the actual process whereby the agricultural commodities are severed from their attachment to the soil. Thus, while transportation to a concentration point on the farm may be included, “harvesting” never extends to transportation or other operations off the farm. The “growing” of shade-grown tobacco is considered to include such work as preparing the soil, planting, irrigating, fertilizing, and other activities. This type of tobacco requires special cultivation and is grown in fields that are completely enclosed and covered with cheesecloth shade. The leaves of the plant are picked in stages, as they mature. The leaves are taken immediately to a tobacco barn, located on the farm, where they are strung on sticks and dried by heat. Before the drying process is completed, the leaves are allowed to absorb moisture. Then they are dried again. It is not until the end of this drying operation that the leaves are packed in boxes and taken from the farm to a building plant for further processing (see *Mitchell v. Budd*, 350 U.S. 473). Under the general principles stated above, “harvesting” of shade-grown tobacco is considered to include the removal of the tobacco leaves from the plant and moving the tobacco from the field to the drying barn on the farm, together with the performance of other work as a necessary part of such operations. Subsequent operations such as the drying of the tobacco in the barn on the farm and packing of the tobacco for transportation to the bulking plant are not included in “harvesting.”

EXEMPT PROCESSING

§ 780.515 Processing requirements of section 13(a)(14).

When it has been determined that an employee is an “agricultural employee employed in the growing and harvesting of shade-grown tobacco,” to whom section 13(a)(14) of the Act may apply, it then becomes necessary to ascertain whether he is “engaged in the processing * * * of such tobacco, prior to the stemming process, for use as Cigar-wrapper tobacco.”

§ 780.516 “Prior to the stemming process.”

The exemption provided by section 13(a)(14) applies only to employees whose processing operations on shade-grown tobacco are performed “prior to the stemming process.” (See H. Rept. No. 75, 87th Cong., first sess., p. 26). This means that an employee engaged in stemming, the removal of the midrib from the tobacco leaf (*McComb v. Puerto Rico Tobacco Marketing Co-op. Ass’n.*, 80 F. Supp. 953, affirmed 181 F. 2d 697), or in any operations on the tobacco which are performed after stemming has begun will not come within the exemption. Stemming and all subsequent operations are nonexempt work.

§ 780.517 “For use as Cigar-wrapper tobacco.”

The phrase “for use as Cigar-wrapper tobacco” limits the type of end product which may be produced by the exempt operations. As its name indicates, cigar-wrapper tobacco is used as a cigar wrapper and is distinguished from other types of tobacco which serve other purposes such as filler, pipe, chewing, and other kinds of tobacco. Normally, shade-grown tobacco is used only for cigar wrappers. However, if the tobacco is not being processed by the employer for such specific and limited use, the employee is not engaged in exempt processing operations.

§ 780.518 Exempt processing operations.

The processing operations under section 13(a)(14) include, but are not limited to, “drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling” of the shade-grown